DOCKET NO: 240597US8

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF   :

TAKAYUKI ISHIGURO, ET AL.   : EXAMINER: TU X. NGUYEN

SERIAL NO: 10/623,517   :

FILED: JULY 22, 2003   : GROUP ART UNIT: 2618

FOR: METHOD OF DECIDING   :
TRANSMIT POWER LEVEL, WIRELESS
TERMINAL, BASE STATION, AND
MOBILE COMMUNICATIONS SYSTEM

PROVISIONAL ELECTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action dated August 24, 2007, Applicants provisionally

elect, with traverse, Group I, Claims 1, 2, 6, 7, and 9-16 for further examination on the merits

in the present application.

Applicants respectfully traverse the Restriction Requirement because the PTO has not

carried forward its burden of proof to establish that searching and examining the noted sets of

claims would be an undue burden.

In particular, MPEP § 803 states:

> If the search and examination of an entire application can be
> made without serious burden, the Examiner must examine it on
> the merits, even though it includes claims to distinct or
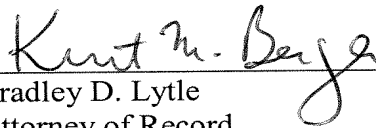> independent inventions.

The claims of the present invention would appear to be part of an overlapping search

area.[1]

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[1] [1]To do justice to identified groups of claims, it is respectfully submitted that it would be necessary to search in both Classes and subclasses identified in paragraph 2 at page 2 of the outstanding Official Action.

Accordingly, Applicants respectfully traverse the outstanding Restriction Requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner. Thus, it is believed that an examination on the merits of Claims 1-7, 9-18, and 20-26 is in order and it is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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